

[INSERTION FOR PAGE 71 OF THE SPECIFICATION, at line 15:]

To help establish the metes and bounds of the term "substantially", and most particularly the phrase "substantially exclusively" in certain of the appended claims, it is to be understood that the purpose of the broad term "substantially" is to prevent competitors from instituting trivial, i. e. insignificant, changes merely to cynically "get around" the claim language.

This function of the terms "substantially" and "substantially exclusively" is extensively elaborated in the patent-office history of this document, particularly including caselaw cited by the Commissioner's representative and discussed in the inventor's responses. The Manual of Patent Examining Procedure states (emphasis added):

"The term 'substantially' is often used . . . to describe a particular characteristic of the claimed invention. It is a broad term."

The decision in the famous Festo case echoes the intended understanding described above — though the present inventor aims to rely at least in part on the term "substantially" rather than only on the now-rather-controversial doctrine of equivalents. Festo says (emphasis added):

"The inventor who chooses to patent an invention and disclose it to the public, rather than exploit it in secret, bears the risk that others will devote their efforts toward exploiting the limits of the patent's language: 'An invention exists most importantly as a tangible structure or a series of drawings. A verbal portrayal is usually an afterthought written to satisfy the requirements of patent law. This conversion of machine to words allows for unintended idea gaps which cannot be satisfactorily filled. Often the invention is novel and words do not exist to describe it. The dictionary does not always keep abreast of the inventor. It cannot. Things are not made for the sake of words, but words for things.' Autogiro Co. of America v. United States, 384 F.2d 391, 397 [155 USPQ2d 697] (Ct. Cl. 1967).

"The language in the patent claims may not capture every nuance of the invention or describe with complete precision the range of its novelty. If patents were always interpreted by their literal terms, their value would be greatly diminished. Unimportant and insubstantial substitutes for certain elements could defeat the patent, and its value to inventors could be destroyed by simple acts of copying."

Here the term "insubstantial", referring to the "substance" of the matter, stands in opposition, or in contrast, to the word "substantially".